

January 04, 2021

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXASUNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISIONBY: _____ **JU**
DEPUTY

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. SA-19-CR-28-OLG
)	
TONY DWAYNE ALBERT)	

ORDER

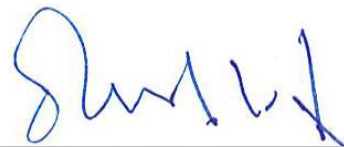
On December 8, 2020, the Court ordered that Defendant, Tony Dwayne Albert, undergo a psychiatric or psychological examination pursuant to 18 U.S.C. § 4243(b), and that a report be filed with the Court pursuant to the provisions of § 4247(b) and (c)(1)-(4) and (C). The Court further ordered that the examination be conducted within 30 days so the Court could hold a hearing “not later than forty days following the special verdict,” as required by 18 U.S.C. § 4243(c). The Court also ordered that if necessary, and upon a showing of good cause, the director of the facility may request an additional thirty days for observation and evaluation. *See* 18 U.S.C. § 4247(b).

The Court has been advised that an extension until March 5, 2021 is being requested because there is no “bed availability,” there is a “wait list for available beds,” there are “national manning” issues, and a “growing list of patients.” The Court stresses that this case has already been adjudicated and any further delay is deeply troubling. The timelines set forth in the Court’s order are statutory and although the applicable provisions allow a thirty day extension “upon a showing of good cause that the additional time is necessary to observe and evaluate the defendant,” the Government is seeking an additional sixty days to simply transport Defendant. After Defendant arrives at a suitable facility, the examiner will need an additional extension to observe and examine Defendant.

On February 15, 2019, when the Court ordered that Defendant be evaluated pursuant to §§ 4241 and 4242, Defendant did not arrive at the facility until August 1, 2019, more than five months later. The Court did not receive the examiner's report until January 2, 2020, almost one year after the Court's order for examination. The first delay, and now a second delay, are unacceptable.

At this juncture, the Court will GRANT an extension until February 12, 2021. However, the Court further ORDERS that all possible alternatives for transportation, available bed, examiner, and appropriate facility be explored and exhausted prior to February 12, 2021. Any further extension will be granted only if there is a thorough explanation of steps taken pursuant to this order and upon a showing of good cause as to why this Defendant cannot be transported to an appropriate facility by February 12, 2021. The hearing previously scheduled for Thursday, January 14, 2021, at 9:30 a.m. will be reset.

SIGNED this 4th day of January, 2021.



ORLANDO L. GARCIA
CHIEF U.S. DISTRICT JUDGE